

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

RONALD BERTRAND,	:	
Plaintiff,	:	
	:	CIVIL ACTION
v.	:	
	:	No. 03-6890
SNYDER'S GATEWAY, INC.,	:	
Defendant.	:	

MEMORANDUM AND ORDER

Schiller, J.

February 10, 2004

I. BACKGROUND

Plaintiff Ronald Bertrand, a Delaware resident, brings this personal injury action against Defendant Snyder's Gateway, Inc., a Pennsylvania corporation with its places of business located in Bedford County, Pennsylvania, invoking the Court's diversity jurisdiction pursuant to 28 U.S.C. § 1332. In his Complaint, Plaintiff alleges that he was injured when he slipped and fell at one of Defendant's businesses. Defendant now moves this Court to dismiss for improper venue pursuant to Federal Rule of Civil Procedure 12(b)(3), or alternatively, to transfer this action to the United States District Court for the Western District of Pennsylvania pursuant to 28 U.S.C. § 1406(a). For the reasons set forth below, I grant in part and deny in part Defendant's motion and transfer this action to the United States District Court for the Western District of Pennsylvania.

II. DISCUSSION

Venue in a diversity action is proper under 28 U.S.C. § 1391(a) in:

(1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated,

or (3) a judicial district in which any defendant is subject to personal jurisdiction at the time the action is commenced, if there is no district in which the action may otherwise be brought.

28 U.S.C. § 1391(a) (2003). When a party files a motion pursuant to Federal Rule of Civil Procedure 12(b)(3) and 28 U.S.C. § 1406, this party bears the burden of proving that venue is improper. *See Myers v. Am. Dental Assoc.*, 695 F.2d 716, 724-25 (3d Cir. 1982). Under 28 U.S.C. § 1406(a), “the district court of a district in which is filed a case laying venue in the wrong . . . district shall dismiss, or in the interest of justice, transfer such case to any district . . . in which it could have been brought.” 28 U.S.C. § 1406(a) (2003). According to § 1391(c), in a multidistrict state, a corporate defendant, such as Defendant in the present case, is deemed to reside in any district where it would be subject to personal jurisdiction if that district were a separate state. 28 U.S.C. § 1391(c).

In the present case, Defendant Snyder’s Gateway, Inc. is incorporated in the Commonwealth of Pennsylvania and owns three businesses located in Bedford County, Pennsylvania: a Holiday Inn Express, an Econo Lodge, and Gateway Travel Plaza, the truck stop where Plaintiff fell on January 3, 2002. (Bittner Aff. at 1.) Accordingly, venue is improper under § 1391(a)(1) in the Eastern District of Pennsylvania and clearly proper under § 1391(a)(1) in the Western District of Pennsylvania as Defendant resides in and conducts business solely in the Western District of Pennsylvania.¹

In response to Defendant’s motion, Plaintiff argues that venue is proper in this District under

¹ As venue is proper in the Western District of Pennsylvania under § 1391(a)(1), consideration of § 1391(a)(3) is not necessary. *See* 28 U.S.C. § 1391(a)(3) (providing venue is proper in any district where defendant is subject to personal jurisdiction only if there is “no judicial district where the action might have been otherwise brought”).

§ 1391(a)(2) because he has received medical treatment in the Eastern District of Pennsylvania for the injuries he sustained as a result of his fall at one of Defendant's businesses. Medical treatment, however, is not considered part of the "events or omissions giving rise to" a personal injury claim under 28 U.S.C. § 1391(a)(2). *See Wisland v. Admiral Beverage Corp.*, 119 F.3d 733, 736 (8th Cir. 1997) (holding that in personal injury action, venue is not proper under § 1391(a)(2) in district where medical treatment is performed, rather venue is proper in district where accident giving rise to negligence claim occurred); *Smith v. Fortenberry*, 903 F. Supp. 1018, 1020 (E.D. La. 1995) (same); *see also Cottman Transmission Sys., Inc. v. Martino*, 36 F.3d 291, 294 (3d Cir. 1994) ("Events or omissions that might only have some tangential connection with the dispute in litigation are not enough."). In this case, the substantial events giving rise to Plaintiff's claim occurred on Defendant's business premises located in the Western District of Pennsylvania where Plaintiff allegedly slipped and fell. Therefore, venue is also improper in the Eastern District of Pennsylvania under § 1391(a)(2) and proper in the Western District of Pennsylvania. Accordingly, as venue is improper in this District, this action must be dismissed or transferred under § 1406.

Plaintiff contends if the Court considers transferring this action, the District of Delaware, where he resides and where several of his witnesses are located, is the appropriate alternative venue.² Plaintiff, however, cannot demonstrate that the District of Delaware would be an appropriate venue

² Plaintiff's argument is based upon 28 U.S.C. § 1404, but because venue is improper in this District, § 1404 does not apply. 28 U.S.C. § 1404 (providing "[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought"); *See also Jumara v. State Farm Ins. Co.*, 55 F.3d 873, 878 (3d Cir. 1995) ("Section 1404(a) provides for the transfer of a case where both the original and the requested venue are proper."). Accordingly, the Court analyzes Plaintiff's request under § 1406.

for the same reasons as discussed above regarding the Eastern District of Pennsylvania. Defendant resides and conducts business solely in the Western District of Pennsylvania, and thus venue is improper in the District of Delaware under §1391(a)(1). Similarly, Plaintiff cannot demonstrate a significant connection to the events underlying this cause of action in order to satisfy § 1391(a)(2) merely by asserting that Plaintiff resides in the State of Delaware and some of his treating physicians have offices there. Thus, venue would be improper in the District of Delaware. *See* 28 U.S.C. § 1406 (permitting transfer only to district in which action “could have been brought”).

Finally, in considering whether to dismiss or transfer this action, I note that the statute of limitations has run on Plaintiff’s personal injury claim under Pennsylvania law, and thus, in the interest of justice, I transfer this action to the United States District Court for the Western District of Pennsylvania. 28 U.S.C. § 1406 (providing discretion to district court to transfer rather than dismiss “in the interest of justice”); *Borel v. Pavichevich*, No. 01-1395, 2001 U.S. Dist. LEXIS 20097, at *11, 2001 WL 1549538, at *3 (E.D. Pa. Dec. 4, 2001) (using discretionary powers to transfer when statute of limitations problems would arise from dismissal); *Feinzig v. Doyon Servs.*, No. 97-4638, 1998 U.S. Dist. LEXIS 5419, at *13, 1998 WL 254973, at *5 (E.D. Pa. Apr. 17, 1998) (same); *Peek v. Golden Nugget Hotel & Casino*, 806 F. Supp. 555, 560 (E.D. Pa. 1992) (same); *Wims v. Beach Terrace Motor Inn, Inc.*, 759 F. Supp. 264, 270 (E.D. Pa. 1991) (same). An appropriate Order follows.

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ORDER

AND NOW, this 10th day of **February, 2004**, upon consideration of Defendant's Motion to Dismiss, or in the Alternative, Transfer for Improper Venue, Plaintiff's reply thereto, and for the foregoing reasons, it is hereby **ORDERED** that:

Defendant's Motion to Dismiss, or in the Alternative, Transfer for Improper Venue (Document No. 4) is **GRANTED in part** and **DENIED in part** as follows.

1. Defendant's Motion to Dismiss is **DENIED**.
2. Defendant's Motion to Transfer is **GRANTED**.
3. This action is **TRANSFERRED** to the United State District Court for the Western District of Pennsylvania.

BY THE COURT:

Berle M. Schiller, J.